IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 19 .11.2004

Coram

The Honourable Mr. Justice V. KANAGARAJ

W.P. No.11865 of 1997

Tamil Nadu Water Supply and
Drainage Board Administrative
Staff Association No.2230
rep. By its General Secretary
P. Arumugam ... Petitioner

..Vs..

1. Tamil Nadu Water Supply
and Drainage Board,
rep. by its Managing
Director,
Chepauk, Madras - 5.

2. The State Government of
Tamil Nadu,
rep. by its Secretary,
Ministry of Rural Development,
Fort St. George,
Madras - 9. ... Respondents

Petition under Article 226 of The Constitution of India, praying to issue a writ of mandamus.

For Petitioner : Mr. Venkataraman
for M/s.Aiyar & Dolia

For Respondents : Mrs. Sudharshana Sundar
for R1

Mr. R. Chandrasekaran,
Govt. Advocate for R2

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O R D E R

The above writ petition has been filed praying to issue a writ of mandamus, forbearing the respondents from making recovery from the salary payable to the Junior Assistants/Steno Typists/Typists, who have all been admitted to the benefits of payment of one advance increment on account of their passing the account test for Public Works Department Offices and Subordinate Offices.

2. Today, when the above matter was taken up for consideration, learned counsel for the petitioner would submit that the Junior Assistants, Assistants and other staff working in the administrative offices of the first respondent are members of the petitioner-association; that at the meeting of the TWAD Board held on 5.11.87, the TWAD Board resolved to adopt and follow G.O.Ms.No.2583 PWD dated 2.12.1986 in regard to sanction of advance increment for passing the Public works department test by the employees of the TWAD Board; the said G.O. Dated 2.12.1986 provides one advance increment to the Junior Assistants/Typists/Steno Typists serving in various offices of P.W.D. Department, who have passed the account test; that the first respondent paid the advance increment subject to the condition that in the cadre of typists and steno typists, the advance increments should be sanctioned after they become fully eligible for promotion as Assistant by passing D.O.M. And the departmental test and they should be willing for promotion as Assistant; that the Junior Assistantsand eligible typists and steno typists, who have passed the relevant tests working in all offices of the first respondent, have received the advance increment; that on that basis, their scale of pay in the cadre of Assistant had been fixed subsequently in appropriate stage, consequent upon their promotion as Assistants; that by letter dated 2.8.89, the first respondent had clarified that for earning the advance increment, Junior Assistants need not pass the departmental test and D.O.M. test; that one Vasanthi, Junior Assistant made representation on 16.3.1992 to fix her pay on par with the pay drawn by one Kalaivani by granting her advance increment with effect from 18.5.90 on account of her having passed the relevant test; that by citing a letter from the Deputy Secretary of the second respondent dated 31.3.1994, the first respondent had ordered by the proceedings No.A1/27052/ENT/II/95 dated 2.7.1997 recovering the advance sanctioned to them from 17.8.1988 and 18.5.1990 to Kalaivani and Vasanthi respectively; that the respondents also ordered recovery of the advance increment already granted from the salaries of

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all Junior Assistants/Typists/Steno Typists serving in all the offices of the first respondent; that when the Government Order dated 2.12.86 is still in force, the first respondent lacks competence to act upon a letter of the Deputy Secretary dated 31.3.1994 and give effect to the said letter three years later even without hearing the employees prejudicially affected by it; that the petitioner, by letter dated 2.7.97, requested the first respondent not to implement the recovery of the advance increment already granted, but the same ended in vain and he would pray for the relief extracted supra.

3. Learned counsel for the petitioner, in support of his submissions, referred the book "Act and Regulations", wherein he has referred page 8 Chapter III Section 9, page 57 sections 22 and 23 "No person shall be eligible ..... in column (3) thereof.", page 58 (3). Non Technical P.A. To the Chief Engineer .. By promotion or deputation ..., page 95 secti9on 34(c) "No employee shall be ..... column(2) thereof." and page 96.

4. Learned counsel also referred page 1 of the typed set of papers and page 3 para 6 of the affidavit.

5. Learned counsel appearing for the respondents, not only filed counter, but also submitted that pay fixation and other regulations etc. are subject to the approval of the Government; that all pays fixed are subject to the approval of the Government; that the Act says, the Board is empowered to make any regulation, subject to the approval of the Government; that the Government passed the G.O. Sanctioning advance increments to Junior Assistants and the Typists and Steno-typists; that there was stagnation in promotion, though they passed the required tests; that the Government thought it fit to adopt such policy of passing the said G.O.; that in the meantime, one Vasanthi, who was the senior person, had passed accounts test and got her incentive increment, whereas her junior K. Kal;aivani, passed the account test on 18.5.90 got her incentive increment after the revision of scale of pay as per V Pay Commissioner; that the disparity in the pay of S. Vasanthi, Junior Assistant had arisen; that by letter dated 31.3.94, it is stated that as pay anomaly has arisen due to sanction of advance increment to the Junior for passing account test, it will not be proper to sanction advance increment for passing this test; that the Board is a statutory organisation and it has to
abide by the executive orders or instructions issued by the Government in the Rural Development Department, which is the administrative department to TWAD Board and hence would

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pray for the dismissal of the writ petition.

6. In reply to the above submissions, learned counsel for the petitioner would submit that having given the increment for nearly ten years from 1988 to 1997, now recovering the same is not justifiable; that for fixation of pay scale and revision of fixation of pay, approval by the Government is not necessary and learned counsel also referred page 5 of the typed set of papers in this regard.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what this Court is able to assess from the pleadings, documents and the arguments are that the demand of the petitioner association representing on behalf of the Junior Assistants/Steno Typists/Typists, who have been admitted to the benefits of payment of one Advance increment on account of their passing Account Tests meant for P.W.D. Officers and Subordinate Officers, should not be deprived of the said benefits and therefore, would pray to forbear the respondents from making recoveries from their salary; that the first respondent by letter dated 2.8.1989 clarified that for getting the advance increment, Junior Assistants need not pass the departmental tests and D.O.M. Tests but citing a letter from the Deputy Secretary of the second respondent dated 31.3.1994, the first respondent had ordered by its proceedings dated 2.7.1997 recovering the advance sanctioned to them from 17.8.1988 and 18.5.1990 but for two Junior Assistants viz., Kalaivani and Vasanthi respectively besides ordering recovery of the advance increment already granted from the salaries of all Junior Assistants/Stenotypists and typists serving in all the offices of the first respondent.

8. The arguments of the petitioner is that when the Government Order dated 2.12.1986 is still in force, the first respondent lacks competence to act upon the letter of the Deputy Secretary dated 31.3.1994 which is trying to give effect to the said letter, three years later, even without hearing the employees prejudicially affected by the same and inspite of the petitioner's letter dated 2.7.1997 requesting the first respondent not to implement the recovery of the advance increment already granted.

9. The Government order cited above dated 2.12.1986 in G.O. MS. No. 2853 of P.W.D., wherein citing the proceedings of the Chief Engineer dated 9.6.1983 and yet another G.O. Ms. No. 907/ P & A.R. (FR II) dated 17.9.1986, wherein the Government would direct that the

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advance increment be sanctioned to those Junior Assistants/Stenotypists/typists in Tamil Nadu Ministerial Services working in various offices in the Public Works Department, who passed the Account Tests for Public Works Department and Subordinate Officers subject to certain conditions enumerated therein.

10. The petitioner's case is that this Government Order has been clarified by a letter sent by the Deputy Secretary, dated 31.3.1994 giving effect to the same after three years of its coming into existence. The further argument of the learned counsel for the petitioner is that the letter being prejudicial to the interest of the members of the petitioner association, the same cannot be implemented without providing an opportunity for the employees of the petitioner association to be heard and in spite of the petitioner association by letter dated 2.7.1997, requesting the first respondent not to implement the recovery of the advance increment already granted, it ended in vain and hence, would come forward to file the above writ petition for the relief stated supra.

11. On the part of the respondents, they would put up their arguments to the effect that whatever be the decision of the TWAD Board, it is only subject to the approval of the Government; that it was found that the juniors drew more than the seniors; that there cannot be any vested rights for the first respondent and therefore, only subject to the Government letter dated 31.3.1997 any privilege can be enjoyed by the members of the petitioner association. It would further be argued to the effect that a Writ of Mandamus arises only when there is vested interest and that in the case of the petitioner, straight away ordering mandamus may not arise. However, this argument would be met with on the part of the learned counsel for the petitioner saying that only after having failed in all their attempts to stop the implementation of the recovery proceedings ultimately, they have resorted to the writ proceedings; that when the first Government Order is still valid, it cannot even be clarified by a subsequent government Order and therefore, would insists that the prayer be answered.

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12. Be that as it may; the pertinent question raised on the part of the petitioner association is quite legal in the sense that once a privilege has been granted under the Government Order, the first respondent lacks competence to act upon a letter of the Deputy Secretary dated 31.3.1994 and to give effect to the same that too three years later. This argument of the petitioner is further consolidated

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that when the increment already

granted is ordered to be recovered from their salaries, definitely, the members of the petitioner association are going to be affected adversely and while so, without an opportunity of hearing being given to them, implementing the views expressed by the Deputy Secretary to the Government in his letter dated 31.3.1994 is illegal and the same has to be held contrary to law and hence, would pray for the grant of the relief in the writ petition.

13. So far as the legalities are concerned, this Court is of the view that only after having made an attempt to stop the recovery of the advance increment already granted, from the salary of those categories such as Junior Assistants/Typists/Stenotypists, the petitioner Association has come forward to file the above writ petition praying for the issue of a Writ of Mandamus and therefore, this Court is able to see nothing wrong regarding the maintainability of the above writ petition.

14. Secondly, an order passed under the authority of the Government in the form of a Government Order cannot be nullified or modified or removed by a mere letter of the Deputy Secretary dated 31.3.1994. The first respondent acting against the Government Order, particularly when it is still in force, cannot be permitted in law since the Government Order has got statutory force and since it emanates from the statutory provisions of law which give power to the Government to pass such orders, and therefore, the first respondent is acting in accordance with the suggestions of the letter dated 31.3.1994 of the Deputy Secretary of Government so as to nullify the principles adopted and implemented under a Government Order which cannot be done in law.

15. Thirdly, while the members of the petitioner association are susceptible to be affected by the implementation of the letter dated 31.3.1994, they are definitely expected to be heard prior to making of any adverse decision against them. Giving effect to the principles of natural justice and since no such opportunity has been afforded for the petitioners to be heard, under this score also, the decision of the first respondent cannot be permitted to be implemented and hence the following order:-

In result,

(i) The above writ petition succeeds and

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the same is allowed;

(ii) The respondents are hereby prevented from making recovery from the salary payable to the Junior Assistants/Steno Typists/Typists, who have all been admitted to the benefits of payment of one advance increment on account of their passing the Account Tests for P.W.D. Offices and Subordinate Officers.

(iii) However, in the circumstances of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

ssa/ra

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To

1. The Managing Director,
   Tamil Nadu Water Supply
   and Drainage Board,
   Chepauk, Madras - 5.

2. The Secretary,
   Government of Tamil Nadu,
   Ministry of Rural Development,
   Fort St. George,
   Madras - 9.

+ One C.C. To Mrs. Sudharshana Sundar Advocate SR 49752

Pre-Delivery Order in
W.P. No.11865 of 1997
19.11..2004

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